

REMARKS

Claims 1-9, 12-18, 22-29, 31-40, 58, 59, 67, 68, 70-90 and 92-104 are pending in the application, claims 92-104 being newly added and claims 19, 69 and 91 being canceled herein. Claims 10, 11, 20, 21, 30, 41-57, and 60-66 were previously canceled. Claims 1, 29, 58, 68, 70, 72, 73, 78, and 90 are the only independent claims.

Restriction Requirement

Claims 1-9, 12-18, 22-29, 31-40, 58, 59, 67, 68, 70-90 and 92-104 stand subject to a Species Election Requirement according to which the Examiner has divided the claims into seven groups, namely, Species I directed to a method of skin treatment by multiple applications of electromagnetic radiation, the application being dependent on skin condition, Species II directed to a method of skin treatment by multiple applications of electromagnetic radiation, the application being independent of skin condition, Species III directed to a method of prophylactic skin treatment by application of electromagnetic radiation and exposure to Xray or UV radiation within a time interval, Species IV directed to a light treatment by directing energy towards a skin surface followed by application of a marker film, Species V directed to a skin treatment method with the determination of a degree of exposure to Xray or UV radiation followed by application of electromagnetic radiation, Species VI directed to a skin treatment method by applications of electromagnetic radiation to a skin surface, the frequency of applications being dependent on the intensity of exposure to Xray or UV radiation, and Species VII directed to a skin treatment method by applications of electromagnetic radiation to a skin surface, with the implied step of selecting the wavelength based on the absorption of an endogenous chromophore.

The Examiner maintains that the species have mutually exclusive steps and that "claims directed to different species are mutually exclusive if one claim recites limitations disclosed for a

first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first.”

In response to the Species Election Requirement, applicant hereby provisionally elects Species VI for continued prosecution in the application. It is believed that claims 73-77 read on this species.

The election is made with traverse first on the grounds that the Examiner has already searched and examined the present application four previous times. Surely with such extensive searching and repeated consideration of applicant’s invention, it would not be an undue burden at this late date for the Examiner to complete the examination of all of the pending claims. The differences between the invention as presently claimed and as set forth in previous iterations of the claims are incremental at most, requiring only a limited additional search if any.

Moreover, it is believed that the various species of invention listed by the Examiner, with the possible exception of Species IV, would entail the same field of search in the same subclasses. The allegation by the Examiner that the various identified species have mutually exclusive steps does not mean that the species have acquired separate status in the art. (See MPEP § 803 and Guidelines thereunder.)

The Examiner maintains that the species have mutually exclusive steps and that “claims directed to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first.” This passage from the MPEP is a definition of “mutually exclusive” not a definition of “species.” The species must be identified first, prior to a determination of whether the claims are mutually exclusive. The Examiner is improperly identifying multiple species by pointing to different limitations in the claims. If the Examiner’s

rationale were proper, then every claim with a unique limitation (including every dependent claim) would necessarily set forth a different species of invention.

Applicant further traverses the Examiner's Species Election Requirement on the grounds that at least some of the identified species overlap with other species. For instance, claim 73 includes the limitation "the applying of said electromagnetic radiation to said skin surface being effectuated in the absence of any visible damage from Xray or ultraviolet radiation along said skin surface." Thus, claim 73 recites a method wherein the application of electromagnetic radiation is dependent on skin condition. The other pending claims that include this limitation are not mutually exclusive and should be examined together with claim 73. In particular, independent claims 1, 68 and 72 and all of the claims dependent from claim 1 or 68 should be examined together with claim 73 and its dependent claims pursuant to the Species Election Requirement.

In view of the above grounds for traversal, applicant respectfully requests that the Examiner review and reconsider the Species Election Requirement.

Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,

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